IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 9685 of 2004

Between:

1 Sitagari Kumara Swamy S/o Seetharamaiah
D.No.13-1087, Bazaar Street, Venkatagiri Town, Nellore District
2 Smt. Atambakarm Venkata Ratnamma W/o Late A.Venkata Reddy,R/o 13-114, Bazaar Street Venkatagiri Town, Nellore District
3 Atambakam Mohan S/o Late A.Venkata Reddy
R/o 13-114, Bazaar Street Venkatagiri Town, Nellore District
4 Atambakam Venkateswaralu S/o Late A.Venkata Reddy
R/o 13-114, Bazaar Street Venkatagiri Town, Nellore District
5 Atambakam Srinivasulu S/o Late A.Venkata Reddy
R/o 13-114, Bazaar Street Venkatagiri Town, Nellore District
6 Chintakayala Ramachandraiah S/o C.Narsimhulu
13-106, Bazaar Street, Venkatagiri Town, Nellore District
7 Smt. Kalaganda Sarada W/o Late K.Adiseshaiah
13-107, Bazaar Street, Venkatagiri Town, Nellore District
8 Kalaganda Venkateswarlu S/o Late K.Adiseshaiah
13-107, Bazaar Street, Venkatagiri Town, Nellore District
9 Kalaganda Srinivas S/o Late K.Adiseshaiah
13-107, Bazaar Street, Venkatagiri Town, Nellore District
10 Smt. Chitamuri Veeramma W/o Late Chitamuri Rama Lingaiah
13-112, Bazaar Street, Venkatagiri Town, Nellore District
11 Daniyala Mani S/o Daniyala Subbulu
13-108, Bazaar Street, Venkatagiri Town, Nellore District
12 Daniyala Ranganatham S/o Daniyala Ramanaiah
13-108, Bazaar Street, Venkatagiri Town, Nellore District
13 Smt. Kalaganda Seshulu W/o Bhaskar
13-106, Bazaar Street, Venkatagiri Town, Nellore District
14 Koppolu Subramanyam @ Settypally Subrahmanyam S/o Munuswamy; 13-110. Bazaar Street, Venkatagiri Town, Nellore District
15 Smt. Kalaganda Venkataratnamma D/o K.Subramanyam
(RR 13 & 14 are R/o 13-12, Bazaar Street, Venkatagiri Town, Nellore District
16 D.Ramanaiah S/o Srinivasulu

13-109, Bazaar Street, Venkatagiri Town, Nellore District

..... PETITIONERS

AND

1 The AP. State Secretary Wakf Board, Mapally, Hyderabad
2 The Revenue Divisional Officer Gudur, Nellore District
3 The Chief Executive officer AP. State Wakf Board,Public Gardens Nampally, Hyderabad-001

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the respondents in publishing the property in Survey No. 138 at present in Ward no.13, Vide Gazette No.4 dt. 23/01/1992 as Wakf Property and consequential order of the 3rd respondent bearing No.F.No.M7/19/Prot/NLR/96, dt. 1/06/2004 to evict the petitioners from the lands respectively as bad, arbitrary, contrary to provisions of Wakf Act 1995 apart from the principles of natural justice and also offends Articles 14,21 and 300-A of the Constitution of India and set aside the same,

For the Petitioner : MS.M.VIDYAVATHI , Advocate

For the Respondents 1 & 3: Mr. S.M. Subhani, Standing Counsel.

For the Respondent No.2: GP FOR REVENUE

The Court Made the Following ORAL ORDER:

This Writ Petition is filed by the petitioners questioning the action of the respondents in declaring the properties in Sy.No.138, in Ward No.13, which was notified in Gazette No.4, dated 23.1.1992 as wakf properties, and the consequential order of the 3rd respondent dated 1.6.2004 to evict the petitioners from the lands as illegal and arbitrary, and consequently to set aside the same as illegal and without jurisdiction.

2. However, at the time of admission, it is brought to the notice of the Court by the Standing Counsel for the respondents that the petitioners

have got an effective remedy before the Wakf Tribunal (for short 'the Tribunal') constituted under the provisions of the Wakf Act, 1995 (hereinafter referred to as 'the Act'). Therefore, this Court directed the petitioner to approach the Tribunal for the relief sought for in the present Writ Petition. Accordingly, adjourned the matter on 16.6.2004 by two weeks and meanwhile, status-quo was ordered to be maintained. Today when the matter came up for admission again it is represented by the counsel for the petitioners that when the petitioners sought to present a suit before the Tribunal, the Tribunal refused to receive the suit on the ground that the petitioners did not comply with the provisions of Sec.83 of the Act by issuing a notice as contemplated and unless the said statutory notice is served on the Wakf Board, the suit would not be numbered and entertained by the Tribunal.

3. The learned counsel for the petitioners contended that the issue as to the compliance of the notice at the time of enquiry by the Commission, may be examined by this Court, and if it is found that the said opportunity by issuing notice was not complied with, the entire proceedings are liable to be quashed. The learned counsel also relied upon an earlier Judgment of this Court in W.P.No.7747 of 1997 & Batch, dated 15-02-2004.

4. However, this Court declines to go into the merits of the matter, as separate Tribunal has already been constituted to deal with the matters in respect of the properties declared as Wakf properties and other incidental issues. Therefore, it would be appropriate for the petitioner to go before the Tribunal for adjudication of the matter.

5. The learned Standing Counsel also contended that the petitioner has got an effective remedy before the Tribunal and with reference to the

issuance of statutory notice, the petitioner can seek exemption as is provided under the provisions of the Code of Civil Procedure, as all the procedures contemplated under the CPC are being followed by the Tribunal. Therefore, the learned counsel sought for appropriate orders.

6. Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue appearing for the respondent No.2, and the Standing Counsel for respondents 1 and 3, and considered the material on record.

7. In view of the fact that the petitioner is questioning the gazette notification declaring the property, which the petitioners claiming to be the Wakf property, and the consequential order of eviction, the said issue has to be adjudicated by the Tribunal, constituted under the provisions of the Act. As an objection has already been taken by the Tribunal that a statutory notice has to be issued before filing the proceedings in the Tribunal, this Court deem it fit to order to maintain status quo for a period of three months. Within the said period of three months, the petitioners have to comply the statutory provisions by issuing necessary notice to the Respondent-Board and thereafter initiate appropriate proceedings, if the petitioner sought to assail the proceedings before the Tribunal.

8. With the above observation, the Writ Petition is disposed of directing the respondents to maintain status quo for a period of three months from today i.e., up to the end of September 2004.

S.Ananda Reddy,J.

Dt. 01.07.2004
Note:
Issue copy in two days.
(bo) Kvh

Sd/-

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, A.P., Wakf Board, Nampally, Hyderabad
2. The Revenue Divisional Officer, Gudur, Nellore district;
3. The Chief Executive Officer, A.P. State Wakf Board, Public Gardens, Nampally, Hyderabad;
4. Two CCs. To the G.P. for Revenue, High Court of A.P., Hyderabad (OUT)
5. One CC to Mr. S.M. Subhani, Standing Counsel (OPUC)
6. Two CD Copies.

Kvh

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 9685 of 2004

ORAL ORDER

01..07..2004